PUBLIC PROSECUTOR

v.

WONG KOK SEIN & ORS.

HIGH COURT, BRUNEI
DENYS ROBERTS CJ
[CRIMINAL TRIAL NO. 8 OF 1987]
1 AUGUST 1987

CRIMINAL PROCEDURE: *Offences of kidnapping and extortion - Principles of sentencing - Concurrent sentences.*

All the defendants except for the third defendant were charged for offences of kidnapping and extortion under the Penal Code. The third defendant was charged for extortion for aiding and abetting the offence of kidnapping. They pleaded guilty.

Held:

[1] The factors which were taken into consideration in sentencing were the culpability of each defendant and the extent of their participation in the commission of the crimes; the gravity of the offence; the age of the fifth defendant who was 14 years at the material time, the plea of guilty; and the cooperation of the defendants with the police.

[2] Concurrent sentences were imposed when two offences were closely inter mingled and formed part of the same transaction. Here the kidnapping was executed for the purpose of extortion.

[3] The first defendant was sentenced to five years on the first charge and three years on the second charge. The second defendant was sentenced to six years on the first charge and three years on the second charge. The third defendant was sentenced to eighteen months on the first charge and twelve months on the second charge. The fourth defendant was sentenced to three years on both charges. The sentences for the first, second, third and fourth defendants were to run concurrently.

[4] The fifth defendant was released on bond for a period of 12 months in one surety and on probation for a period of three years in view of his age.

Legislation referred to:
Criminal Procedure Code [Brunei], s. 262
Penal Code [Brunei], ss. 365, 385

JUDGMENT

Denys Roberts CJ:

The first, second, fourth and fifth defendants pleaded guilty to one charge of kidnapping with intent to secretly and wrongfully confine, contrary to s. 365 of the Penal Code. The third defendant pleaded guilty to aiding and abetting an offence under the same section. All five defendants pleaded guilty to a further charge of extortion contrary to s. 385 of the Penal Code.

Before turning to the facts of the case I have three preliminary observations to make. First, that the punishments for offences against s. 365 of the Penal Code, a maximum of ten years, and for offences under s. 385, a maximum of seven years, seem to me to be far too low.

In many countries the death penalty is imposed for kidnapping and in a number of others the maximum is life imprisonment.

Second, I must comment on the good sense of the kidnapped boy's family in reporting the matter to the police at an early stage.

Third, the Royal Brunei Police deserve much praise for the skilful way in which they handled a delicate case. Acting with great speed and good sense they managed to maintain surveillance over the kidnappers without their presence being noticed and to arrest them swiftly after the boy had been released.

Facts

On the evening of 8 April this year, a twelve year old boy, Lee Han Leong had attended a private lesson at his tutor's flat, near Saint George's School. When he left the building and started to walk home, a man in black, wearing a motor-cycle helmet and face visor, walked up to him and bundled him into a white car.

The man who had seized him was the first defendant. The car was being driven by the fifth defendant, with the fourth defendant sitting in the back seat with the victim.

The victim's eyes were covered and he was driven to a house, which had been leased by the conspirators for this purpose and taken to a room where he was chained to a padlock in the wall.

During the next two days, the first defendant carried out a series of negotiations with the family of the victim by telephone. At first he demanded a ransom of $2,000,000. Later he reduced this, after several telephone calls, to $600,000, half to be paid on the evening of 10 April and half on the following day.

During these conversations the first defendant warned the boy's aunt, who acted as spokesman for the victim's family, that unless the money was produced, the kidnappers would tied up the boy and abandon him in the jungle.

On the instructions of the police, the boy's father agreed to pay over the first instalment of $300,000 on the evening of 10 April. The first defendant gave him detailed instructions as to where he should go and how he should travel. After being directed to two places enroute, he was finally told to wait at the junction of Kota Batu and Muara roads. Having informed the police of the rendezvous, he went there and parked. Soon afterwards, a car containing the first and second defendants arrived. The first defendant entered the father's car, took over the wheel and drove it towards Kampong Batu Marang, while the second defendant followed in another car.

After a while, the first defendant stopped the car, took the money joined the second defendant in the other car and drove off with him. The victim was released an hour later, the kidnappers having decided that it would be too dangerous to try to collect the second instalment of $300,000 the following day.

The conspirators gathered together at the house to divide the money which they did in the following proportions; the first and second defendants received $100,000 each, the fourth and fifth defendants $50,000 each. Each of them decided to make a small contribution from his to D3, who had rejoined the conspiracy at a late stage. He received $20,000 in all.

Soon after the victim was released, the police, who had already identified four of the five defendants, took immediate steps to arrest them. The fourth defendant was arrested soon afterwards, having been identified by one of the other kidnappers.

Out of the $300,000 handed over by the father, $295,870 was recovered. $4,130 is still missing.

This was a carefully planned and skilfully executed kidnapping which had been considered by the group for some months before April 1987. Indeed, there had been two previous abortive attempts to snatch the boy on his way home in the evening from his private classes.

Kidnapping and extortion are offences of the utmost gravity and it is essential that those who might be tempted to make easy money by such methods should realise that if they are detected the punishment is likely to be severe. The suffering which is caused, not only to the victim but to his family, by abduction and threats of this nature cannot be ignored.

In offences of this nature the fact that those who commit them have no previous convictions and are relatively young is unlikely to save them from substantial prison sentences.

Individual defendants

I turn now to the relative culpability of the five defendants. The first defendant was active throughout the conspiracy and its execution.

It was he who rented the house to be used as a place for meetings and as a place in which the victim could be kept. The first defendant seized the boy and bundled him into the car. It was he who chained the boy to the wall in the hired room. It was the first defendant who negotiated the ransom on behalf of the others. It was he who made the threats that the boy would be abandoned in the jungle and told the family that the boy was ill and upset.

The first defendant was the person who took the money from the victim's father and got into the car with the victim's father and drove it away.

He and the second defendant received the largest shares of the money.

I give credit to the first defendant as I do to all the other defendants for their relative youth for their previous good record for their early admissions to the police of their guilt for their pleas of guilty and for their remorse which I will accept to be genuine.

I also give some weight to the fact that, apart from being confined, the boy appears to have been properly fed and decently treated.

Nevertheless, I have no doubt that the blameworthiness of the first defendant is heavier than any of the others except the second defendant.

The second defendant who is aged 21 is a cousin of the kidnapped boy. It was he who originally conceived the idea of abducting him, his main motive being a desire to revenge himself upon his wealthy grandfather and uncles, who had not helped the second defendant's family, and in particular his father, as much as the second defendant thought they should have done. He was, his Counsel submitted in mitigation attempting, to put right an acute sense of injustice.

In my view, however, the fact that these offences were conceived and planned and led by the second defendant against a member of his family is an aggravating factor, which I take into account in assessing the proper sentence. I have no doubt that the culpability of the second defendant is higher than that of any of the others. He conceived the idea and continued to supervise the activities of the other conspirators from the beginning until the end.

The third defendant's part in these offences was much smaller, as indeed was recognised by the prosecution when bringing an alternative charge of aiding and abetting against him.

Although present during the early stages of the discussions he withdrew from the conspiracy a few days before the victim was taken.

On the evening of 10 April, however, he was asked by the second defendant for the loan of a car. Only when he had provided the car did the second defendant suggest to him that he should also act as look-out, to keep watch over the father of the victim to make sure that the police were not shadowing him.

He was then told that the boy had been seized and that ransom money was about to be collected. He was promised to a share if he helped. He yielded to temptation, acted as look-out and reported what he had seen to the second defendant.

The part which he played, therefore, while not unimportant, was limited in time and of a much lesser degree of blameworthiness than that of the first two defendants.

The fourth defendant was part of the conspiracy from the outset, taking part in some of the meetings at which the kidnapping was planned. He was one of the group who actually abducted the boy, sitting with him in the back seat of the car to ensure that the boy was unable to escape.

He accompanied the boy to the house where he was kept and was one of those who guarded him throughout the next two days.

He received a substantial amount for his part and, although his culpability is less than that of the first two defendants, I regard it as half higher than that of the third.

The fifth defendant played a similar part to the fourth. He entered the conspiracy at an early stage, when he was asked to provide false number plates for use in the car in which the boy was to be abducted, which he did.

The fifth defendant who drove the car at the time the boy was seized. He was one of those who guarded the boy in the rented house. He received $50,000 as his share of the proceeds.

The only factor which distinguishes him from the other defendants is his youth. I accept that a boy under the age of fourteen is liable to be easily swayed by adults and gullible enough to join his friends in an expedition of this kind.

Even so, it is only my reluctance to send a boy of this age to a long term of imprisonment in an adult institution that prevents me from imposing a substantial term upon him.

If a special place of detention were available for youthful offenders, it is likely that I would have sent him there for a considerable time.

In the circumstances, I have felt it necessary, though not without some hesitation, to make use of the provisions of s. 262 of the Criminal Procedure Code.

I, therefore, make, in relation to the fifth defendant, two orders:

(a) that he be delivered to his elder brother Lim Soo Heng. Upon Lim Soo Heng executing a bond in the sum of $5,000 to be responsible for the good behaviour of the fifth defendant for a period of 12 months, and

(b) that the fifth defendant be released on probation of his good conduct, on entering a bond to appear at any time within the next three years and receive judgment if called upon and in the meantime to keep the peace and be of good behaviour.

I have considered whether it would be appropriate to order consecutive or concurrent sentences in the case of the first four defendants.

The general principle is that if two offences are closely intermingled and form part of the same series of transactions, it is proper for concurrent sentences to be imposed.

While it is possible to abduct under s. 365 without any extortion under s. 385, the two normally go together, except in case of abduction for political purpose.

In this case the kidnapping was executed purely for the purpose of extortion and, not without reluctance, I have decided to impose concurrent sentences on the first four defendants.

I impose on the first defendant sentences of five years on the first charge, and three years on the second charge, the sentence to run concurrently. On the second defendant the sentences will be six years and three years concurrent. On the third defendant, the sentences are eighteen months and twelve months concurrent. On the fourth defendant the sentences are three years and three years concurrent.

I should make it clear that, in each case, the sentences imposed would have been at least 25% higher if the defendants had not pleaded guilty and been of assistance to the police.

Also found at [1988] 1 CLJ 873